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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**BY HAND DELIVERY**

William F. Caton  
Acting Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

**Re: Expedited Petition for Clarification**

96-451

Dear Mr. Caton:

BT North America Inc., pursuant to Section 1.2 of the Commission's Rules, 47 C.F.R. § 1.2, hereby files an original and four copies of its Expedited Petition for Clarification in the above-captioned proceeding.

Please direct questions concerning this Petition to the undersigned at (202) 833-9543.

Respectfully submitted,

Kristen Neller Verderame  
VP, U.S. Regulation & Government Relations  
BT North America Inc.

cc: Dorothy Atwood  
Catherine Schroder  
Greg Guice  
Paul Garnett  
William Scher

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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In the Matter of

Federal-State Joint Board on  
Universal Service

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)  
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CC Docket No. 96-45

**EXPEDITED PETITION FOR CLARIFICATION  
OF BT NORTH AMERICA INC.**

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**BT NORTH AMERICA INC.  
EXPEDITED PETITION FOR CLARIFICATION**

BT North America Inc. (“BTNA” or “Petitioners”) hereby submits, pursuant to Section 1.2 of the Commission’s Rules, 47 C.F.R. § 1.2, an Expedited Petition for Clarification in the above-captioned proceeding. Specifically, BTNA requests that the Commission clarify that revenues from non-common carrier video distribution services provided by its Broadcast Services unit<sup>1</sup> are not subject to universal service contribution or reporting requirements.

**I. INTRODUCTION AND SUMMARY**

With a few narrow exceptions, all providers of interstate telecommunications are required to contribute to universal service.<sup>2</sup> Current Commission jurisprudence exempts entities that transmit and distribute video programming on a non-common carrier basis – including broadcasters, cable operators, open video systems (“OVS”) and direct broadcast satellite (“DBS”) providers – from universal service contribution requirements. BTNA is a telecommunications carrier, and provides some common carrier telecommunications services for which it unquestionably should be required to make contributions. However, BTNA also operates a Broadcast Services unit, which provides non-common carrier services that are essentially equivalent to, and directly compete with,

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<sup>1</sup> This petition is not requesting that BTNA as an entity be declared exempt from universal service contribution requirements. Rather, we are requesting solely that the Commission clarify that revenues derived from BTNA’s provision of video programming transmission and distribution services through its Broadcast Services unit are not subject to universal service contribution requirements.

<sup>2</sup> 47 U.S.C. § 254(d) (2001).

those offered by broadcasters and DBS providers. BTNA has included revenues from its Broadcast Services unit in its universal service assessments. However, because a number of its competitors that provide essentially identical services are exempt from universal service contribution requirements, BTNA Broadcast Services has been operating at a significant competitive disadvantage -- exacerbated by the fact that it has been unable to recoup universal service fees from its customers due to the price-sensitivity of the marketplace.

Given the Commission's rationale in exempting non-common carrier providers of video programming distribution, including broadcasters and DBS providers, we do not believe it was the Commission's intention to sanction such market disparity and discriminatory market conditions. Accordingly, we respectfully request that the Commission clarify that revenues from non-common carrier video distribution services provided by BTNA's Broadcast Services unit are not subject to universal service contribution requirements.

We further request that the Commission undertake an expedited review of this Petition and consider a shortened public comment period as the issues herein were originally put before the Commission in June of 2001 and subject to full public comment as part of the Commission's recent universal service contribution proceeding.<sup>3</sup>

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<sup>3</sup> Federal-State Joint Board on Universal Service, et al., Notice of Proposed Rulemaking, 16 FCC Rcd 9892 (2001) ("Contributions NPRM").

## II. **CURRENT COMMISSION JURISPRUDENCE EXEMPTS BROADCASTERS AND DBS PROVIDERS FROM UNIVERSAL SERVICE CONTRIBUTION REQUIREMENTS**

In the First Report and Order, the Commission determined that “satellite and video service providers must contribute to universal service only to the extent that they are providing interstate telecommunications services” – *i.e.*, services offered on a common carrier basis.<sup>4</sup> As examples of this general principle, the Commission specified, “Thus, for example, . . . entities providing open video systems (OVS), cable leased access, or direct broadcast satellite (DBS) services would not be required to contribute on the basis of revenues derived from those services.”<sup>5</sup> In its Fourth Reconsideration Order, the Commission expanded its previous determination, and made it clear that broadcasters and ITFS licensees, whose non-common carrier services compete directly with those of cable, OVS, and DBS providers, are covered by the same exclusion from contribution requirements as those entities.<sup>6</sup> The Commission’s reasoning is set forth below:

For the reasons described below, we find that that public interest would not be served if we were to exercise our permissive authority to require broadcasters, including ITFS licensees, that engage in non-common carrier interstate telecommunications to contribute to universal service. In the {First Report & Order}, we found that, in order to ensure that our contribution rules do not confer a competitive advantage to non-common carriers, non-common carriers should contribute to universal service pursuant to our permissive authority over “other providers of interstate telecommunications.” On further reconsideration, however, we agree with AAPTS that broadcasters do not compete to any

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<sup>4</sup> Federal-State Joint Board on Universal Service, First Report and Order, 12 FCC Rcd 8776, ¶ 781 (1997) (“First Report and Order”), *subsequent history omitted*. “Telecommunications services” are defined synonymously with “common carrier” services. *See id.* at ¶ 793; 47 U.S.C. § 153(43).

<sup>5</sup> First Report and Order, ¶ 781.

<sup>6</sup> Federal-State Joint Board on Universal Service, Fourth Memorandum Opinion and Order on Reconsideration, 13 FCC Rcd 5318, ¶ 283 (1997) (“Fourth Reconsideration Order”), *subsequent history omitted*.

meaningful degree with common carriers that are required to contribute to universal service because broadcasters primarily transmit video programming, a service that is not generally provided by common carriers. Moreover, we conclude that broadcasters' primary competitors for programming distribution are cable, OVS, and DBS providers. Because cable, OVS, and DBS providers are not required to contribute to universal service, the exclusion from the obligation to contribute for broadcasters will ensure that broadcasters are not competitively disadvantaged in the video distribution industry by our contribution requirements.<sup>7</sup>

Thus, the Commission reasoned that it was not appropriate to subject broadcasters to universal service contribution requirements because: (1) they do not compete "to any meaningful degree" with common carriers that are required to contribute; and (2) to subject broadcasters to such requirements would competitively disadvantage them in the marketplace because their competitors are not subject to such requirements.

### **III. THE COMMISSION SHOULD CLARIFY THAT REVENUE FROM NON-COMMON CARRIER VIDEO DISTRIBUTION SERVICES PROVIDED BY BTNA BROADCAST SERVICES ARE EXEMPT FROM UNIVERSAL SERVICE CONTRIBUTION REQUIREMENTS**

The Commission's jurisprudence exempting broadcasters, cable operators, OVS and DBS providers, and ITFS licensees from universal service contribution requirements should logically extend to similarly situated entities transmitting video programming on a non-common carrier basis, based on the Commission's reasoned analysis. Specifically, an entity that transmits and distributes video programming on a non-common carrier basis, that does not compete with common carriers required to contribute to universal service, and whose competitors are not required to contribute to universal service, should

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<sup>7</sup> *Id.*, footnote references omitted.

be interpreted as falling into the category of providers that the Commission has already exempted from universal service contribution requirements.

BTNA Broadcast Services fits this category. BTNA Broadcast Services provides “Occasional-Use” and “Full-Time”<sup>8</sup> broadcast services, including uplink, downlink and transport portions of video transmission services among various countries, including the United States and international points, for worldwide distribution, on a non-common carrier basis. Where permitted, the BTNA Broadcast Services’ teleports in Washington, D.C. and Los Angeles, California, uplink to all major satellite systems, including INTELSAT, EUTELSAT, New Skies Satellites, Loral Skynet, SES Americom, Hughes and Panamsat, and on behalf of major broadcast and cable programming clients around the world, such as ABC, CBS, NBC, CNN, NFL, NBA, BBC, HBO, TNT, USA Network, Canal+, Telepiu, Rai, ITV Sport, EBU, Canal Antilles, TF1, Mnet and Star TV. BTNA Broadcast Services transmits, on behalf of U.S. broadcasters, a variety of services providing coverage of major news and sporting events such as the Wimbledon Tennis Championships and the 1996 Atlanta Olympics transmitted live internationally for worldwide distribution.

BTNA Broadcast Services does not compete with common carriers. Rather, BTNA Broadcast Services’ competitors include other providers of satellite video

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<sup>8</sup> “Occasional Use” broadcast services typically take the form of part-time contribution of news or sporting event content, while “Full-Time” broadcast services typically take the form of 24X7 content acquisition, plus contribution service (via fiber or satellite) coupled with a distribution platform (e.g., Direct-to-Home, cable distribution or over-air broadcast).



transmission, broadcasters, DBS operators, and cable operators.<sup>9</sup> In addition, given the current structure of the marketplace, BTNA Broadcast Services competes extensively with broadcasters and DBS providers who are not required to contribute to universal service. Specifically, we note the following examples illustrating BTNA Broadcast Services' competitors in the broadcast/DBS marketplace.

- (1) Broadcasters/cable operators (US): Liberty Media holds interests in numerous globally-branded entertainment networks and regional cable companies, including LibertyLiveWire. LibertyLiveWire holdings in turn include multiple broadcast service providers (e.g., 4MC). Due to these relationships, LibertyLiveWire is able to package contribution service (in direct competition with BTNA Broadcast Services) with program distribution. In addition, LibertyLiveWire owns Triumph Communications that provides fiber transmission services from local affiliates to DirecTV (in direct competition with BTNA Broadcast Services) for DBS distribution. Marketed and sold as DBS packages, revenues from such services are not subject to universal service requirements.
- (2) Broadcasters (global): European Broadcasters Union has a global network to distribute transmissions to affiliates, and they sell off excess capacity in the marketplace in direct competition with BTNA Broadcast Services. As broadcasters, their revenues are not subject to universal service requirements.

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<sup>9</sup> Moreover, services offered by BTNA Broadcast Services do not involve interconnection with the public switched telephone network ("PSTN"), nor does BTNA Broadcast Services derive any benefit from the increased connectivity promoted by the federal universal service program.

- (3) DBS operators (example 1): DirecTV is owned by Hughes, which also owns PanAmSat and Galaxy. The packages sold by DirecTV include DBS distribution with contribution transmission via PanAmSat or Galaxy transmission services. Marketed and sold as DBS packages, revenues from such services are not subject to universal service requirements.
- (4) DBS operators (example 2): Echostar acquired Kelly Broadcasting Systems that provides the same full-time international contribution services as BTNA Broadcast Services and utilizes the exact same satellites (New Skies-K). Kelly Broadcasting Systems bundle and sell a DBS package, including international transmission via New Skies-K plus direct-to-home distribution, under one price that is not subject to universal service requirements.

From these examples it is clear that the state of the marketplace is such that a number of BTNA Broadcast Service's competitors are broadcasters and/or DBS providers, entities that do not provide common carrier services and are not subject to universal service contribution requirements. It is significant to note that because these providers are not subject to universal service contribution requirements, they do not charge customers a universal service fee. BTNA has included revenue from its Broadcast Services unit in its universal service assessments. However, in order to stay price-competitive, BTNA Broadcast Services has been unable to charge customers universal service fees, and it has therefore been prevented from recouping its contribution as allowed by law.<sup>10</sup> As a result, BTNA Broadcast Services has been operating at a

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<sup>10</sup> See 47 U.S.C. ¶ 201, 202, 254; First Report and Order, ¶ 853.

significant competitive disadvantage solely due to the discriminatory impact of universal service requirements as applied across the marketplace.

Given the Commission's rationale in the Fourth Reconsideration Order, we do not believe it was the Commission's intention to sanction such market disparity and discriminatory market conditions.<sup>11</sup> Rather, we believe that the most clear-cut interpretation of that decision was that operators like BTNA's Broadcast Services unit should fall into the same exempt category as other parties that transmit and distribute video programming on a non-common carrier basis. Therefore, we respectfully request that the Commission clarify that revenues from non-common carrier video distribution and transmission services provided by BTNA's Broadcast Services unit are not subject to universal service contribution or reporting requirements.

#### **IV. REQUEST FOR EXPEDITED REVIEW**

BTNA originally raised the issues discussed in this Petition with the Commission in the pending universal service proceeding in its public comments filed June 25, 2001, and these issues have already been subject to public comment in that proceeding. Because the issues raised herein have been before the Commission since June, and the public has already had the opportunity to comment under the full comment period in that proceeding, we respectfully request that the Commission undertake an expedited review of this Petition, and further request that the Commission consider a shortened public comment period of 15 days for comment and 10 days for reply comments.

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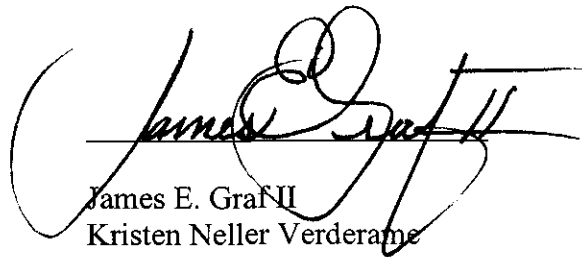
<sup>11</sup> The statute dictates that contributions to universal service shall be "equitable and nondiscriminatory." 47 U.S.C. §254(b)(4), 254(d).

## **V. CONCLUSION**

For the reasons discussed above, we respectfully request that the Commission clarify that revenues from non-common carrier video distribution and transmission services provided by BTNA's Broadcast Services unit are not subject to universal service contribution or reporting requirements. We further request that the Commission undertake an expedited review of this Petition and consider a shortened public comment period as the issues herein were originally put before the Commission in June of 2001 and subject to full public comment as part of the Commission's recent universal service contribution proceeding.

Respectfully submitted,

**BT NORTH AMERICA INC.**

A handwritten signature in black ink, appearing to read "James E. Graf II", is written over a horizontal line.

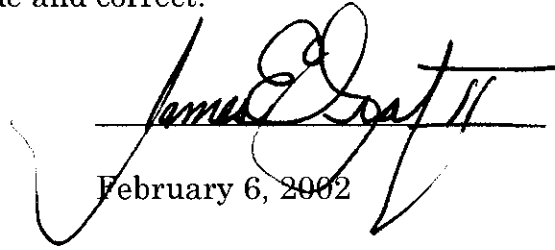
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Dated: February 6, 2002

## CERTIFICATION

I, James E Graf II, President of BT North America Inc., hereby certify that I have read the foregoing Expedited Petition for Clarification of BT North America Inc., and all factual statements and certifications in the Petition to the best of my knowledge and belief are true and correct.

A handwritten signature in black ink, appearing to read "James E Graf II", is written over a horizontal line. To the left of the signature is a large, stylized checkmark or flourish. Below the signature, the date "February 6, 2002" is printed.

February 6, 2002